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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 765.

Charles J. Gregory and Clyde L. Paul, as a Committee for Holders of Kentucky Fuel Gas Corporation 6½% Debentures and The Vanston Bondholders Protective Committee for Holders of First Mortgage Bonds of Kentucky Fuel Gas Corporation, Petitioners,

vs.

The Columbia Gas System, Inc., Ben Williamson, Jr., as Trustee of Inland Gas Corporation and of Kentucky Fuel Gas Corporation, et al., Respondents,

and

Paul E. Kern, Petitioner,

vs.

The Columbia Gas System, Inc., et al., Respondents,

and

In the Matter of Inland Gas Corporation, Debtor,

In the Matter of Kentucky Fuel Gas Corporation, Debtor,

In the Matter of American Fuel & Power Company et al., Debtors.

BRIEF

Of Clinton M. Harbison, Trustee in Opposition to the Petitions for Writs of Certiorari in the Above Captioned Cases.

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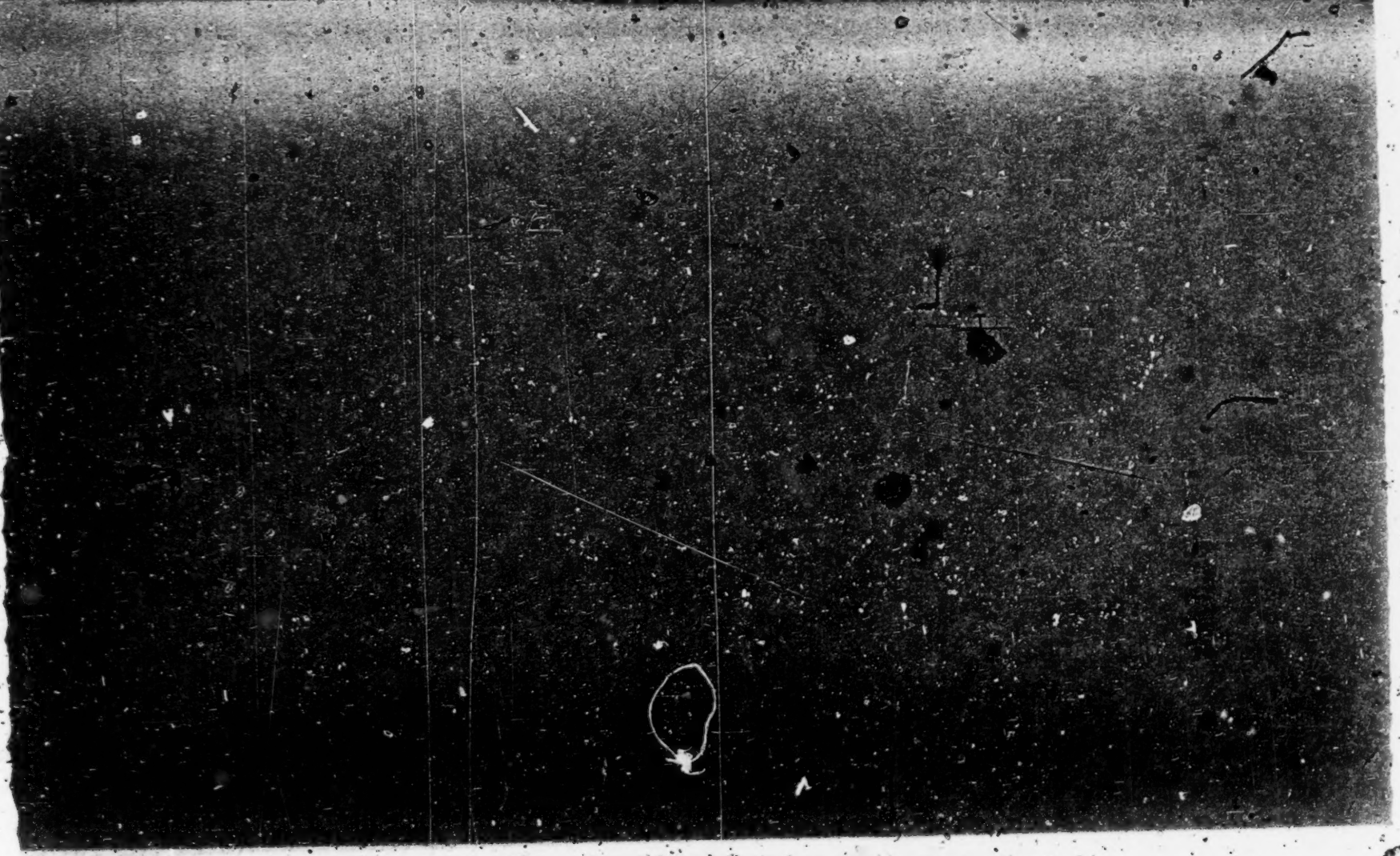

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STATEMENT OF THE CASE.

We are unable to agree with the statement of the case contained in the petitions filed by the Committee for Holders of Kentucky Fuel Gas Corporation debentures and of the Vanston Committee, nor do we agree with the statement contained in the petition filed by Paul E. Kern insofar as these petitions advance as a reason for granting the writ applied for, that the plan of reorganization allows post bankruptcy interest to the Holders of American Fuel

and Power Company Gold Notes. This response will be limited solely to a consideration of this phase of the case, as we anticipate that counsel for Columbia Gas System will respond to the issues made between the petitioners and the Columbia Gas System as respondent. We think when the facts of the case are correctly understood it will be readily apparent that the District Court committed no error of law in approving the plan of reorganization which allowed interest on the American Fuel publicly held securities.

The issue of the American Fuel and Power Company 6% Gold Notes was secured by a pledge of 72.6% of stock of Inland Gas Corporation. The factual basis for the petitioners contention that the claims of the Kentucky security holders and the American Fuel security holders should be treated on a pari passu basis is that Inland Gas Corporation is insolvent and that therefore the security behind the Inland Gas notes is worthless and has no value. They further contend that both claims were awarded quasi-creditor status and therefore should be treated alike. These assertions of fact, if incorrect, cause the respondents legal arguments to fall of their own weight. This is candidly admitted in the petition of the Committees for Kentucky Fuel security holders at page 17 where it stated: "Admittedly, if the 73% of the Inland stock has value, then all of such value inures to the benefit of the American Noteholders' claims." We propose to demonstrate that the pledge of the stock has a value insofar as the American Fuel securities are concerned in excess of the face of their claim plus accrued interest.

The beginning point, as we see it, is the decision in re Inland Gas Corporation, 187 F. 2d 813. This case involved a contest between Columbia Gas System on the one hand, and the holders of Kentucky securities and the American Fuel notes. The primary question for decision was whether or not Columbia was entitled to a share of the

reorganized Inland, prior to the payment of the claims of the American and Kentucky security holders. It was urged in brief in that case that, since the stock of Inland was pledged as security for the American notes and for the Kentucky securities, the inequitable conduct of Columbia had impaired the value of the security behind the American and Kentucky issues, and therefore it would be inequitable to permit the wrongdoer to share in the reorganized Inland until after further recognition had been given to the equities in favor of the American and Kentucky securities.

That the basis of the decision was the injury done to the security behind the American and Kentucky obligations is clearly indicated by the following quotation from the opinion:

> "(2, 3) We are not advised by this record of the circumstances under which or the representations by which the gold notes of American Fuel supported by the pledge of Inland stock, were sold, and the trust indenture under the terms of which they were issued is not here. The inference is inescapable, however, that the main reliance of the public investors in such securities must have been the Inland stock, based upon Inland assets and pledged for their benefit by American and Kentucky. We are aware that some of the appellants contend that at that time Inland stock had little or no value. The fact remains, however, that the investors must have relied, to large extent, upon the assets of Inland. If not, why was Inland stock pledged? The purpose of the issue was to rehabilitate Inland, to save it from debt default and to increase its holdings of gas acreage, and the inference is likewise inescapable that this must have been understood by the investors. Moreover, it now appears that through excellent management by its trustee Inland assets are sufficient to pay all of its debts exclusive of

the claim of Columbia, so that the expectation of its rehabilitation was not wholly vain. Besides, the entire reorganization structure now planned rests upon the assets of Inland. So viewing it, we think that the public security holders whose investments were guaranteed and supported by a pledge of Inland stock are, in a very true sense, creditors or quasi-creditors of Inland, and that whatever the formal arrangement may have been a realistic view is that they are entitled to creditor status in the plan of reorganization."

We have carefully examined all of the briefs that were filed in that appeal and all of them, without exception, are based upon the factual assertion, since proved false, that 26% of the Inland stock was pledged to secure the Kentucky issue. The opinion further contains the assumption that Inland stock was pledged for the benefit of the Kentucky security holders. This is an important consideration in view of the contention now made by the Kentucky interests that they are entitled to pari passu treatment. The simple fact is that, as the record now states, it has been developed that the Kentucky securities are not secured by a pledge of the Inland stock, while the American securities are, thus, necessitating a different result as between the two estates so far as the two classes of securities are concerned.

The security behind the American Fuel gold notes, namely, the Inland equity, has value. It is a simple Accounting principle that assets equal liabilities plus net worth. Applying this simple formula to the instant situation, the assets of Inland equal its obligations plus the equity after its obligations are paid. As shown by the record, the assets of Inland, after deducting estimated reorganization fees, are approximately $9,900,000. Its debts approximate $900,000, excluding the claims of Columbia, leaving $8,900,000. The claims of Columbia aggre-

gate in principal amount approximately $2,000,000. This constitutes all of the real debt of Inland.

The balance of Inland's assets constitute the equity which is represented by its shares of stock. Seventy-two percent of this equity was pledged to secure the American Fuel gold notes. In the opinion in 187 F. 2d 813 the Court necessarily held, however, that Columbia's debt should be subordinated and not considered in determining the amount of equity available as the security for the American notes.

Seventy-two percent of the $8,900,000 remaining after the satisfaction of the direct claims against Inland, disregarding the claims of Columbia, is necessarily by any computation in excess of the principal and all past due interest on the American Fuel gold notes. The direction of this Court in the 187 F. 2d 813 case to assign to the American notes 72.6% of the residue of the Inland assets over its debts to the American securities, simply was a recognition of the fact that the pledge of 72% of the Inland equity was a valid pledge and that the pledge had value to that extent.

All that has ever been meant by the statement that Inland was insolvent was that there was nothing left for the stockholders of the system as such, after the payment of American securities, Kentucky securities and the subordinated claims of Columbia. The simple statement that Inland was, or is, insolvent in the sense in which it has been used, by no stretch of the imagination, can be tortured into a meaning that the Courts below have ever held that the pledge of the Inland equity to secure the American notes is without value.

The above analysis of the facts of this matter is sufficient to show that the American Fuel securities were secured by a pledge having value in excess of the debt with interest. We understand that it is admitted by all parties

that a secured creditor is entitled to the value of his security and to apply the security to the payment of interest as well as debt. In other words, as we see this matter the issue really is a factual one and certainly does not require the exercise of jurisdiction by this Court.

Respectfully submitted,

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